

## REMARKS

### Status of the Claims

Claims 1-40 are pending in the application.

Claims 1-33 are cancelled with entry of this amendment.

Claims 34 and 40 are amended with entry of this amendment.

Claims 41-52 are new with entry of this amendment.

Claims 34-52 are currently under consideration with entry of this amendment.

### Summary

Claims 1-40 are pending in the application and were subject to a Restriction Requirement set forth in the Office Action dated 13 July 2004. Applicants note that the Preliminary Amendment submitted with the original application documents (filed 28 January 2002) has not been entered. Accordingly, applicants have resubmitted the subject preliminary amendment herewith. Entry of the amendments to the specification and claims prior to examination on the merits is respectfully requested.

### Overview of the Amendment

Applicants, by way of this amendment, have provided an amendment to the specification, cancelled claims 1-33, submitted amendments to claims 34 and 40, and have added new claims 41-52 in order to recite the invention with greater particularity. More specifically, claims 1-33 have been cancelled without prejudice and disclaimer as being drawn to a non-elected invention. Cancellation of these claims is not in acquiescence to any past or present grounds of rejection, and applicants expressly reserve their right to bring the claims again in another related application.

Claim 34 has been amended to incorporate the elements of claim 5 as originally presented. None of the elements from claim 5 have been changed, and thus each element of amended claim 34 is entitled to the full scope of equivalents under the doctrine of equivalents. Claim 40 has merely been amended to correct an obvious typographical

error. Accordingly no new matter has been added by way of the amendments to claims 34 and 40, and the entry thereof is respectfully requested.

New claims 41-52 have been added to recite the invention with greater particularity. Support for new claims 41-52 can be found throughout the specification as originally filed, and in original claims 34-40, and in original claims 1, 5, 7, and 9.

Applicants respectfully submit that new claims 41-52 are adequately supported by the specification and claims of the application as originally filed, and therefore no new matter has been added by way of these new claims. Entry of new claims 41-52 is respectfully requested.

#### The Restriction Requirement

Restriction to one of the following groups of inventions was required under 35 U.S.C. §121:

- Group I. Claims 1-28, drawn to a catheter, classified in class 604, subclass 264;
- Group II. Claims 29-33, drawn to a drug delivery system having a catheter and a drug delivery device, classified in class 604, subclass 65; and
- Group III. Claims 34-40, drawn to a method for delivery of a drug, classified in class 604, subclass 508.

Applicants hereby elect to prosecute the claims of Group III, that is, claims 34-40 without traverse. In addition, applicants have added new claims 41-52 also drawn to a method for delivery of a drug, and ask that the new claims are examined together with the Group III claims.

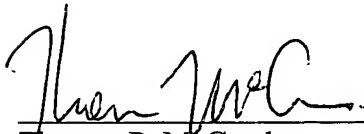
Applicants expressly reserve their right under 35 U.S.C. §121 to file one or more divisional or continuation applications directed to the non-elected subject matter during the pendency of this application.

## CONCLUSION

Applicants submit that the pending claims define an invention that is both novel and nonobvious over the cited art, and thus all claims are in condition for allowance. Acknowledgement of this by the Office in the form of an early allowance is thus respectfully requested. In addition, if the Examiner contemplates other action, or if a telephone conference would expedite allowance of the claims, applicants invite the Examiner to contact the undersigned at (408) 777-4915.

No fees are attached or deemed necessary. If the Commissioner determines that any fee is necessary, the Commissioner is hereby authorized to charge any additional fees associated with this communication to Deposit Account No. **50-1953**. **A duplicate copy of this communication is enclosed.**

Respectfully submitted,



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For and on behalf of  
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